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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2011-0073]

RIN 0579-AD54

Importation of Dracaena Plants from Costa Rica

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the plants for planting regulations to provide conditions for the importation into the continental United States of Dracaena spp. plants from Costa Rica. These conditions will apply to plants less than 460 mm in length, which are currently allowed to be imported, and will also allow for the importation of plants over 460 mm and up to 1,371.6 mm in length, which are currently prohibited. As a condition of entry, Dracaena spp. plants from Costa Rica will have to be produced in accordance with integrated pest risk management measures that will include requirements for registration of place of production and packinghouses, a pest management plan, inspection for quarantine pests, sanitation, and traceability from place of production through the packing and export facility and to the port of entry into the United States. All Dracaena spp. plants from Costa Rica will also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that all conditions for the importation of the plants have been met and that the consignment of plants has been inspected and found free of quarantine pests. This action will allow for the importation of oversized

Dracaena spp. plants from Costa Rica into the United States while continuing to provide protection against the introduction of quarantine pests.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. William D. Aley, Senior Import Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737-1231; (301) 851-2130.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Plants for Planting" (7 CFR 319.37 through 319.37-14, referred to below as the regulations) restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Dracaena is a genus of about 40 species of tree- and shrub-like plants. Several species are grown as houseplants for their decorative strap-like foliage, low maintenance requirements, and tolerance of a wide range of growing conditions. Popular Dracaena spp. houseplants include Dracaena fragrans, commonly known as the corn plant, and Dracaena sanderiana, commonly known as lucky bamboo.

Currently, whole and intact Dracaena spp. plants (including roots, stems, and leaves) may be imported into the United States only if they meet the size requirements in § 319.37-2(b)(6)(i) and other general requirements in the regulations. The regulations currently allow only Dracaena spp. plants less than 460 mm (approximately 18 inches) in length. The size requirement was established because plants of that size are easily inspected and, if necessary, treated for pests; the size and density of growth of larger plants makes them more difficult to inspect and treat.

On November 1, 2011, we published in the Federal Register (76 FR 67379-67384, Docket No. APHIS-2011-0073) a proposal¹ to amend the plants for planting regulations to provide conditions for the importation into the continental United States of Dracaena spp. plants from Costa Rica.

We solicited comments concerning our proposal for 60 days ending January 3, 2012. We received six comments by that date. They were from foreign and domestic industry associations, an importer, a State agriculture department, and a private citizen. The comments were generally supportive but raised two questions concerning the proposed rule.

One commenter asked if the Animal and Plant Health Inspection Service (APHIS) would be supplying copies of the bilateral workplan to domestic stakeholders for review.

Bilateral workplans are agreements between APHIS and the national plant protection organization (NPPO) of a foreign Government and are not typically circulated for stakeholder review. However, they are public documents and interested stakeholders may obtain copies of the workplan by calling or writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Two commenters stated that site visits should be conducted to ensure that the requirements of the bilateral workplan are met. One of these commenters expressed an interest in participating in site visits.

As we explained in the proposed rule, APHIS may conduct site visits to inspect and monitor the pest management program. In the past, representatives of U.S. domestic industries have accompanied APHIS personnel on site visits at the invitation of the host NPPO, so it is a possibility that domestic stakeholders could accompany an APHIS representative traveling to

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0073>.

Costa Rica. We do expect, however, that the routine site visits will most often be carried out by APHIS field personnel in Costa Rica as part of their routine duties rather than by U.S.-based personnel who would have to travel to Costa Rica to visit production and packing sites.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have prepared a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The United States imports approximately 25 million Dracaena spp. plants from Costa Rica annually. On average, APHIS intercepts pests in, and applies treatments to, over 8 percent of the Dracaena consignments and destroys less than 1 percent. Production, packing, storing and exportation of Dracaena spp. plants in accordance with the integrated pest risk management measures set forth in the rule will reduce pest infestations, subsequent pest interceptions, and the need to fumigate or destroy infested consignments at ports of entry.

The oversized Dracaena spp. plants will be of greater value than the smaller plants currently allowed entry, and we expect U.S. nurseries will adjust to new marketing opportunities afforded by the larger plants. Most U.S. nurseries and other entities that may be affected by this rule are small.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of Dracaena spp. plants from Costa Rica under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.² Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building,

² Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0073>. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.37-2 is amended as follows:

a. In the table in paragraph (a), by adding a new entry for “Dracaena spp. plants not meeting the conditions for import in § 319.37-5 (y)”, in alphabetical order, to read as set forth below.

b. In paragraph (b)(6)(i), by adding the words “Dracaena spp. plants from Costa Rica meeting the conditions of § 319.37-5(y),” after the citation “§ 319.37-5(q),”.

§ 319.37-2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Quarantine pests existing in the places named and capable of being transported with the prohibited article
* * * *	* * *	
<u>Dracaena</u> spp. plants not meeting the conditions for import in § 319.37-5(y)	Costa Rica	<u>Ancistrocercus circumdatus</u> ; <u>Caldwellioliola reservata</u> ; <u>Chaetanaphothrips signipennis</u> (banana rust thrips); <u>Coccus viridis</u> (green scale); <u>Diplosolenodes occidentalis</u> (spotted leatherleaf slug); <u>Erioloides consobrinus</u> ; <u>Neoconocephalus affinis</u> (rattler conehead katydid); <u>Oncometopia clarior</u> (blue sharpshooter); <u>Ovachlamys fulgens</u> ; <u>Palliferra costaricensis</u> (Costa Rica mantle slug); <u>Planococcus minor</u> (passionvine mealybug); <u>Pseudococcus landoi</u> (lando mealybug); <u>Sarasinula plebeia</u> (Caribbean leatherleaf slug); <u>Succinea costaricana</u> ; <u>Xylosandrus morigerus</u> (brown coffee twig beetle).
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3. In § 319.37-5, a new paragraph (y) is added to read as follows:

§ 319.37-5 Special foreign inspection and certification requirements.

* * *

(y) Special foreign inspection and certification requirements for *Dracaena* spp. plants from Costa Rica. *Dracaena* spp. plants from Costa Rica may only be imported into the continental United States in accordance with the requirements of this paragraph (y), to prevent the plant pests *Ancistrocercus circumdatus*, *Caldwellioliola reservata*, *Chaetanaphothrips signipennis*, *Coccus viridis*, *Diplosolenodes occidentalis*, *Erioloides consobrinus*, *Neoconocephalus affinis*, *Oncometopia clarior*, *Ovachlamys fulgens*, *Palliferra costaricensis*, *Planococcus minor*, *Pseudococcus landoi*, *Sarasinula plebeia*, *Succinea costaricana*, and *Xylosandrus morigerus* from entering the United States.

(1) Size requirements. *Dracaena* spp. plants from Costa Rica imported into the continental United States may not exceed 1,371.6 mm (approximately 54 inches) in length from

the soil line (or top of the rooting zone for plants produced by air layering) to the farthest terminal growing point.

(2) Bilateral workplan. The national plant protection organization (NPPO) of Costa Rica must provide a bilateral workplan to APHIS that details the activities that the NPPO of Costa Rica will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this paragraph (y).

(3) Phytosanitary certificate. The phytosanitary certificate of inspection required by § 319.37-4 that accompanies each consignment of Dracaena spp. plants from Costa Rica must contain additional declarations that the plants in the consignment have been produced, packed, stored, and exported in accordance with the requirements of this paragraph (y) and the bilateral workplan, and that the consignment has been inspected and found free of quarantine pests.

(4) Participant registration and agreement. Persons in Costa Rica who produce, pack, or ship Dracaena spp. plants for export to the United States must:

- (i) Be registered and approved by the NPPO of Costa Rica; and
- (ii) Enter into an agreement with the NPPO of Costa Rica whereby the persons agree to participate in and follow the export program for Dracaena spp. plants established by the NPPO of Costa Rica.

(5) Facility registration and agreement. Production, packing, and export facilities must be approved and registered by the NPPO of Costa Rica. Registered packing and export facilities may only accept plants from registered production facilities where plants are grown in compliance with the requirements of this paragraph (y) and the bilateral workplan. The NPPO of Costa Rica will provide APHIS with access to the list of registered facilities at least annually and when changes occur.

(6) Training. Participants and personnel at approved production, packing, and export facilities must be trained in the requirements of this paragraph (y) and the bilateral workplan and in recognizing the quarantine listed in this paragraph (y). Training records must be maintained and made available to the NPPO of Costa Rica and APHIS on request.

(7) Pest management program. Participants must establish a pest management program for all approved production, packing, and export facilities. Pest management programs must include field or facility scouting, monitoring, and control of target pests, and must be monitored and approved by the NPPO of Costa Rica. APHIS may visit sites to inspect and monitor the pest management program. Each approved facility must have a trained, dedicated person to supervise the pest management program. Records of pest management activities must be maintained and made available to the NPPO of Costa Rica and APHIS upon request.

(8) Sanitation. Sanitation measures must be maintained at approved production, packing, and export facilities. Fallen or discarded plant material and debris, or plants with pests, must be removed and must not be included in field containers brought from production to packing facilities for export. Packing facilities must be free of sand, soil, earth, and plant pests, and phytosanitary practices adequate to exclude pests must be employed. Equipment, materials, and tools must be sanitized to avoid spreading pests or to prevent recontamination.

(9) Inspections. Inspections undertaken in the export program for Dracaena spp. plants established by the NPPO of Costa Rica will include, but may not be limited to, the following:

(i) Approved production, packing, and export facilities must be inspected by dedicated trained personnel at the approved facilities at least once weekly, and by the NPPO of Costa Rica at least once monthly.

(ii) Packing materials and shipping containers for the plants must be approved by APHIS and inspected by the NPPO of Costa Rica to ensure that they do not introduce pests of concern to the plants.

(iii) Inspection dates and results must be recorded and made available to APHIS upon request.

(10) Traceability. Participants must establish a traceability system approved and audited by the NPPO of Costa Rica and APHIS. The identity and origin of the Dracaena spp. plants must be maintained from the production unit through the packing and export facilities and to the port of entry in the United States.

(11) Recordkeeping. Participants must maintain records of program activities, including corrective measures, for a minimum of 3 years. Records must be made available to the NPPO of Costa Rica and APHIS on request.

(12) Ineligibility for participation. (i) Persons who produce, pack, or ship Dracaena spp. plants will be ineligible for participation in the export program for Dracaena spp. plants and their production sites or packing or export facilities will lose approved status if:

(A) Live pests are found in a production site;

(B) Live pests are found in a shipment of plants; or

(C) Persons who produce, pack, or ship Dracaena spp. plants violate the requirements set out in this section or required under the export program established by the NPPO of Costa Rica.

(ii) A person who produces, packs, or ships Dracaena spp. plants may be reinstated, and that person's production sites or packing or export facilities may regain approved status, by requesting reapproval and submitting a detailed report describing the corrective actions taken by

the person. Reapproval will only be granted upon concurrence from the NPPO of Costa Rica and APHIS.

(13) Trust fund. The Government of Costa Rica must enter into a trust fund agreement with APHIS before each growing season. The Government of Costa Rica or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (y) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (y) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The Government of Costa Rica or its designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Government of Costa Rica or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a

final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Government of Costa Rica or its designated representative or held on account until needed.

Done in Washington, DC, this June 20, 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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